



# CONGRESSIONAL BUDGET OFFICE

## COST ESTIMATE

August 18, 2004

### **H.R. 2971**

### **Social Security Privacy and Identity Theft Prevention Act of 2004**

*As ordered reported by the House Committee on Ways and Means on July 21, 2004*

#### **SUMMARY**

H.R. 2971 would provide new safeguards for the use of Social Security numbers (SSNs) and penalties for SSN misuse. The bill would:

- Bar the sale, purchase, or display of the SSN in both the public and private sectors, with certain exceptions;
- Prohibit the display of SSNs (including magnetic strips or bar codes that contain them) on government checks, drivers' licenses, and motor vehicle registrations, employer-issued identification cards or tags, and cards used to gain access to employee benefits or services;
- Require government and private entities to limit access to SSNs and assure that they have safeguards to prevent breaches of confidentiality;
- Tighten some procedures that the Social Security Administration (SSA) follows when issuing new or replacement SSNs, and require SSA to study further improvements; and
- Create or expand civil and criminal penalties for SSN misuse.

Implementing H.R. 2971 could affect direct spending and revenues, but CBO estimates that any such effects would not be significant. Complying with the bill's standards would also cause federal agencies to incur additional administrative expenses. Those costs—which CBO estimates at \$3 million over the 2005-2009 period—would generally come from agencies' salary and expense budgets, which are subject to annual appropriation.

H.R. 2971 contains a number of intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), including limitations on the sale, display, and use of SSNs by state, local, and tribal governments. While there is some uncertainty about the aggregate

costs of complying with those mandates on those governments, CBO estimates that they likely would exceed the intergovernmental threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation) in at least one of the first five years following the date the mandates go into effect.

H.R. 2971 also would impose private-sector mandates, as defined in UMRA, on certain private entities and consumer reporting agencies. CBO cannot determine the total direct costs of complying with those mandates because the costs would depend on specific regulations that would be issued to implement the bill.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2971 is shown in the following table. For this estimate, CBO assumes that the bill will be enacted in the fall of 2004. The costs of the legislation fall primarily in functions 650 (Social Security) and 750 (administration of justice) but—because all government agencies use the SSN—affect numerous other budget functions as well. As explained below, CBO cannot estimate some potential costs in cases where agencies do not yet know how they would implement certain provisions.

	By Fiscal Year, in Millions of Dollars				
	2005	2006	2007	2008	2009
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup></b>					
Estimated Authorization Level	1	1	*	*	*
Estimated Outlays	1	1	*	*	*

NOTE: \* = Less than \$500,000.

a. Enacting H.R. 2971 could also affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

## BASIS OF ESTIMATE

Federal agencies already comply, or are moving to comply, with most requirements of H.R. 2971. The budgetary effects thus stem from a few provisions that would change agencies' practices or assign new enforcement responsibilities.

## **Current law**

Federal agencies are allowed—in fact, are usually required—to collect SSNs, but the Privacy Act bars the government from selling or renting SSNs or disclosing them (with certain exceptions) without the subjects’ written consent. Agencies also must justify any matching agreements involving computerized records (for example, those that intercept tax refunds of people who have defaulted on government loans), must ensure computer security, and must post their privacy policies when conducting business electronically with the public.

H.R. 2971 would require agencies that accept SSNs electronically from the public to ensure that the number is encrypted or “otherwise appropriately secured from disclosure.” SSA and the Internal Revenue Service—which process millions of reports that contain SSNs—now use encryption or are phasing out the few exceptions. No law now requires encryption, however, so some lower-volume users may use less-advanced technology.

The Treasury Department’s Financial Management Service no longer shows SSNs on checks, except in a few cases dictated by states’ needs. Identification tags issued to federal civilian employees generally do not show or contain the SSN.

## **Spending Subject to Appropriation**

**Social Security Administration and Department of Justice.** H.R. 2971 would give specific new responsibilities to SSA and the Department of Justice. It would direct SSA to independently verify birth records for SSN applicants, except for babies who get SSNs through the Enumeration at Birth program. SSA already does so for applicants more than 1 year old, so extra costs would be insignificant. H.R. 2971 also would require SSA to prepare several studies and reports, notably on a possible requirement for photo identification when people apply for benefits or replacement SSN cards and on revising the account numbering system to reflect the work authorization of immigrants. The Department of Justice would take the lead in drafting regulations to govern compliance with the new law in both the public and private sectors and would prosecute violations. Based on the scope of the agencies’ new tasks, CBO estimates costs of \$2 million over the 2005-2009 period, assuming the availability of appropriated funds.

That estimate contains a major caveat, however. H.R. 2971 would require all federal agencies to demonstrate to SSA that they allow access only to employees who need SSNs to carry out their statutory responsibilities and have safeguards to prevent unauthorized access and breaches of confidentiality. The provision would apply to all SSNs in the agencies’ possession, including paper records, not just to computerized systems. Its implications for contractors (who handle key responsibilities especially in the areas of

welfare and child support enforcement) are unclear. According to the General Accountability Office (GAO), every federal agency uses the SSN in some way. CBO cannot estimate the cost of this provision to SSA or to other agencies because it would depend on SSA's approach.

**Department of Defense.** The bill would ban the display of SSNs on employee identification cards. The Geneva Convention calls for military personnel to have a number displayed on their identification cards, and the Department of Defense has chosen to use the SSN. Under the bill, it would have to revamp its records and cards to use another unique identifier for its 2.7 million active-duty and reserve forces. Because DOD cannot determine at this time how it would implement the provision, CBO cannot estimate the cost, but it could be quite large.

**Employee Benefits.** H.R. 2971 would bar administrators of employee-benefit plans (such as health insurers) from displaying the SSN on identification or membership cards. Some plans that participate in the Federal Employees Health Benefits (FEHB) program show the SSN on membership cards. Although the ban would technically apply only to cards issued one year after issuance of regulations, or about 30 months after enactment, CBO assumes that the affected plans would issue replacement cards to current members as well. (Changes to plans' administrative costs would likely be recouped through higher premiums charged to FEHB enrollees.) Because the government subsidizes FEHB premiums, it would bear part of the cost; CBO estimates the extra cost to the federal government would be less than \$500,000. (About half would come from agencies' salary and expense accounts on behalf of current employees, but the rest would be paid on behalf of annuitants and would constitute direct spending.) CBO expects that the provision would not apply to the government's Medicare program, which shows the SSN on the cards of its 42 million enrollees.

## **Direct Spending and Revenues**

**Civil and Criminal Penalties.** Title III of H.R. 2971 would add or toughen civil and criminal penalties for SSN misuse. The Commissioner of Social Security (with permission from the Attorney General) could impose civil penalties of as much as \$5,000 per offense; criminal penalties require a court conviction and may be as high as \$250,000. Criminal fines are deposited in the Crime Victims Fund and later spent; consequently, over time, they have little net effect on the budget. Collections of civil fines are recorded as revenues and deposited in the Treasury. The penalties would apply to offenses committed after enactment, and CBO judges that they would not be significant over the 2005-2009 period.

**Regulatory Agencies.** Title I would direct the Commissioner of SSA and the Attorney General to consult with—among others—various banking and regulatory agencies when crafting regulations to end the sale or display of SSNs in the public and private sectors. The

Federal Reserve earns interest on its holdings of government securities and subtracts its operating costs before remitting the rest to the Treasury as a revenue. Several other agencies—the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, and so forth—cover their costs through fees or assessments. CBO expects that those agencies would not incur significant costs as a result of H.R. 2971, so that any effect on direct spending or revenues would be negligible.

**Child Support Enforcement.** Requiring government agencies to remove SSNs from checks could raise administrative costs to the child support enforcement (CSE) program or delay distribution of collections. Many states currently use SSNs as their primary identifier when distributing child support, and the federal government covers the bulk of states' costs for administering CSE. However, CBO judges that the requirement would only have a small impact on the federal budget.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

H.R. 2971 contains a number of intergovernmental mandates as defined in UMRA. Specifically, the bill would restrict or prohibit governmental agencies from:

- Selling or displaying Social Security numbers that have been disclosed to the agency because of a mandatory requirement (applicable only to documents issued after the requirements become effective);
- Displaying SSNs on checks or check stubs;
- Placing SSNs on drivers licenses, identification cards, vehicle registrations, or employee identification cards, or coding them into magnetic strips or bar codes on those documents; and,
- Allowing prisoners access to SSNs of other individuals.

The bill also would require state and local governments to restrict access to SSNs and their derivatives to employees whose access is essential to effective administration of programs. In addition, the governments must implement safeguards to preclude unauthorized access to SSNs and their derivatives and to protect individual confidentiality.

While state and local governments have, in recent years, taken steps to reduce the use of SSNs, many continue to use them for a variety of purposes. Based on information from the GAO and discussions with state and local officials, CBO estimates that the costs of complying with the mandates in the bill likely would exceed the intergovernmental threshold

established in UMRA (\$60 million in 2004, adjusted annually for inflation) in at least one of the first five years following the date the mandates go into effect.

## **Exceptions and Requirements**

The bill would allow exceptions for the display or sale of SSNs when such use or display is authorized by the Social Security Act; necessary for law enforcement, national security, or tax law purposes; done in compliance with certain motor vehicle laws or consumer reporting practices; or for non-market research for advancing the public good. The bill's restrictions on the sale or display (which includes Internet transmissions that are not encrypted or otherwise secured) of SSNs would be prospective, and would not require state and local governments to redact SSNs from existing publicly available documents.

However, if state and local governments do not currently have a system in place to safeguard SSNs, they would have to implement a new system for any documents issued when the regulations become effective (up to two and a half years following enactment). If state or local governments use SSNs on checks and check-stubs as part of their recordkeeping and tracking procedures, they would have to alter those systems and remove the SSNs. They also would have to implement systems for removing SSNs from many documents that include SSNs and that are available to the public. Likewise, some states may have to alter their document systems for driver licenses and vehicle registrations to remove SSNs that are coded electronically onto a magnetic strip or digitized as part of a bar code. Finally, any government agency that uses SSNs would have to implement safeguards to preclude unauthorized access to SSNs and their derivatives and to protect confidentiality.

## **Potential Costs to State, County, and Municipal Governments**

Because of the large number of governments affected by these provisions (particularly municipal governments), even small changes to existing systems would result in costs that exceed the threshold established in UMRA. There are over 75,000 municipal governments, so even small one-time costs—for example, as little as \$5,000—would add up to costs over \$60 million in a given year. Counties and states, on the other hand, while fewer in number (there are about 3,600 counties in the United States) are more dependent on SSNs for various recordkeeping and identification purposes and are thus likely to face significantly higher costs because of the complexity and scope of their recordkeeping systems. (Some counties

estimate that altering their systems to use identifiers other than SSNs or to eliminate display of SSNs would result in one-time costs ranging from \$40,000 to over \$1 million, depending on the scope of the changes that would need to be made).

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 2971 would impose private-sector mandates, as defined in UMRA, on certain private entities and consumer reporting agencies. CBO cannot determine the total direct costs of complying with those mandates because such costs would depend on the specific regulations that would be issued under the bill.

### **Prohibition of the Sale, Purchase, and Disclosure of Social Security Numbers**

The bill would impose a private-sector mandate on certain private entities by generally prohibiting the purchase, sale, or display of a Social Security number to the general public, including the display of an SSN on any card or tag issued to another person to provide access to any goods, services, or benefits. Private entities also would be prohibited from displaying SSNs on employee identification cards or tags (including on magnetic strips and bar codes.) In addition, private entities that maintain SSNs in their records for the conduct of their business would be required to limit access to those records and institute safeguards to protect the confidentiality of those records. The Commissioner of Social Security would issue regulations specifying the safeguards that would be required. CBO cannot estimate the direct cost to private entities of complying with those mandates.

### **Refusal To Do Business Without Receipt of Social Security Numbers**

The bill would impose a new private-sector mandate by prohibiting certain private entities from refusing to do business with an individual because the individual will not provide his or her SSN. Such private entities that refuse to do business would be considered to have committed an unfair or deceptive act or practice in violation of federal trade law and would be subject to penalties. The cost of the mandate would be the incremental amount required to complete a business transaction without using a Social Security number for identification or credit verification. For example, a business may incur additional costs in verifying the credit worthiness of a person without an SSN for identification. According to the Federal Trade Commission and industry sources, few private entities currently refuse to do business if an individual does not provide his or her Social Security number. Therefore, CBO estimates that the direct cost to comply with the mandate would be small.

### **Prohibition of Social Security Numbers in Credit Header Information**

The bill also would impose a private-sector mandate on consumer reporting agencies by prohibiting such agencies from providing Social Security numbers, or any derivative of such

numbers, except in a full consumer report furnished in accordance with the Fair Credit Reporting Act. The direct cost of the mandate would be the net income lost to consumer reporting agencies from not furnishing a consumer's Social Security number in the credit header information they sell to customers. According to industry sources, such agencies expect only a slight decrease in the sales of credit header information. Therefore, CBO estimates that the direct cost to comply with the mandate would be small.

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